

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 06-1731 (DSD/JJG)

Vincent R. Waggoner,

Plaintiff,

v.

ORDER

Joan Fabian, Commissioner
of Corrections,

Defendant.

This matter is before the court upon pro se plaintiff Vincent R. Waggoner's objection to the report and recommendation of United States Magistrate Judge Jeanne J. Graham dated July 26, 2007.¹ In her report, the magistrate judge recommended that defendant's motion for summary judgment be granted and plaintiff's cross-motion for summary judgment be denied.

The court reviews the report and recommendation of the magistrate judge de novo. 28 U.S.C. § 636(b)(1)(C). Plaintiff commenced this civil rights action under 42 U.S.C. § 1983 alleging that defendant Joan Fabian, the Commissioner of the Minnesota Department of Corrections ("Commissioner"), violated his rights to equal protection and due process by determining that he is in need of chemical dependency treatment and by continuing to house him in

¹ Plaintiff timely filed his objections to the report and recommendation on August 14, 2007. Therefore, the court vacates its order dated August 15, 2007, in which the court adopted the report and recommendation on the basis that no objections had been filed.

a county jail rather than a Minnesota state prison. The magistrate judge concluded that Waggoner's equal protection claim failed because he made no showing that he is a member of a protected class or that he was treated differently from others similarly situated. As to Waggoner's due process claim, defendant set forth numerous grounds as to why summary judgment was warranted on that claim, and the magistrate judge determined that plaintiff failed to identify a violation of any constitutionally cognizable liberty interest based on the results of the Commissioner's chemical dependency assessment and the Commissioner housing defendant in a county jail. After a thorough review of the entire file and record, the court finds that the report and recommendation of the magistrate judge is well reasoned and correctly applies the law governing the cross-motions for summary judgment. Therefore, the court adopts the report and recommendation of the magistrate judge [Doc. No. 31] in its entirety.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The court's prior order adopting the report and recommendation [Doc. No. 32] is vacated.
2. Defendant's motion for summary judgment [Doc. No. 18] is granted.
3. Plaintiff's motion for summary judgment [Doc. No. 26] is denied.

4. This action is dismissed with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 16, 2007

s/David S. Doty
David S. Doty, Judge
United States District Court